

R marks/Arguments

I. Status of the Claims

In the Claims 3 and 23 - 30 are pending in the application. Claims 1, 2, 4 – 22, 31 – 71, and 81 – 85 have been canceled without prejudice.

II. Ex Parte Quale Practice

In the Office Action, the Examiner closed prosecution as to the merits in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11, 453 O.G. 213. According to the Examiner, “the claims must be amended to specifically recite the elected water dispersible component, hexylene glycol, and the elected ester, pentaerythritol tetraoctanoate.” Applicants respectfully submit that the Examiner’s practice under *Ex parte Quayle* is improper.

The Examiner previously required a election of species with respect to the water dispersible component and the ester in the June 10, 2003 telephone interview. In the course of the telephone interview, Applicants’ representative, Erin Harriman, reminded the Examiner of the proper election of species practice, whereby if the specific water dispersible component and ester elected by Applicants were found to be allowable, the Examiner was required to expand the search to include other specific species. The Examiner agreed.

Nevertheless, after indicating that the elected water dispersible component and ester elected by Applicants were allowable, the Examiner closed prosecution as to the merits in accordance with the practice under *Ex parte Quale*. Although Applicants respectfully submit that the practice followed by the Examiner is improper and will cause unnecessary expense to Applicants, Applicants have amended the claims to specifically recite the elected water dispersible component and the elected ester without prejudice. A divisional application is being filed concurrently herewith.

III. Conclusion

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at (732) 524-3619.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-508/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,


Eric M. Harriman
Reg. No. 40,410
Attorney for Applicants

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003
(732) 524-3619